

NEWSFLASH

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BAN TACS **Accountants Pty Ltd**

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BAN TACS Accountants Pty Ltd

BAN TACS Accountants are a co-operative of accountants who pool their resources and knowledge to provide exceptional client service. All the advantages of a large national firm with the personal services of individual practitioners.

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Welcome to the BAN TACS News Flash. Our aim is to provide short but succinct updates on all tax issues

ITWV Or Not?

ITWV stands for income tax withholding variation. These forms are used by people, typically property investors, to organise to receive their tax refund during the year rather than waiting until they lodge a tax return. The ITWV is just an estimation of your next tax return which the ATO uses to calculate a flat tax rate for the rest of the financial year. It notifies your employer, then less tax is taken out of your pay.

This article is not intended to encourage you to have an ITWV done in fact quite the opposite. The ITWV is not going to increase the amount of tax you save, it is just going to give it to you earlier. Sure there is the time value of money but there is also the cost of having the ITWV prepared. You need to weigh these up. Certainly not worth it for a refund of a few thousand dollars.

If you do have an ITWV prepared by your Accountant make sure you have it done at the same time as you do your tax return as there are economies of effort that will lower the cost. Lodging an ITWV part way through the year is not that much of a disadvantage, it just means you will get a bigger reduction in your tax over the remaining period of time. For example if you were entitled to \$80 per week but don't lodge your ITWV till September you will get \$100 per week for the remainder of the financial year.

Column by Noel Whittaker

A major question for anybody installing solar panels should be how the Tax Office will treat householders who generate solar power and sell the excess back to the grid.

A recent private ruling an accountant friend received is worth thinking about. It assumes “you have a solar electric system on the roof of your principal residence... you are not registered for GST... and your purpose for installing the system was to offset the cost of your electricity and to contribute to greenhouse emission reductions”.

If you are seen to be carrying on a business the income will be taxable income but you will also be allowed to deduct expenses such as depreciation, and even interest on funds borrowed to install the equipment.

The private ruling I have states the taxpayer who applied for the ruling will not be carrying on a business, and consequently will not be entitled to any relevant deductions in respect of the equipment.

Factors taken into account include “the solar panel system will be attached to your home rather than located at a dedicated business facility... although large for a home system it is designed for domestic rather than commercial use... there is no prospect of profit in the short or medium term and the likelihood of profit in the long term is also questionable as it is dependant both on the length of time the panels will remain effective before requiring replacement”. They also point out that the moment you move house you will lose the benefit of the cheaper electricity.

Bear in mind that a private ruling is applicable only to the person who applies for it, but it does give a good indication of the way the ATO will treat the average householder. However, many acreage owners are now spending \$100,000 or more on solar panels with the main intention of selling it at a profit. At some stage they may cross the line and find they are carrying on a business instead of pursuing a hobby. This is why it is imperative that anyone thinking of moving into solar energy on a larger scale seek their own private ruling.

Noel Whittaker is a director of Whittaker Macnaught, a division of St Andrew’s Australia. This advice is general in nature and readers should seek their own expert advice before making financial decisions. Noel’s e-mail address is noelwhit@gmail.com

David Thompson & Julie Lockeridge from Whittaker Macnaught are regularly available to see clients in our office

Arrangements to Increase Debt on a Property

The idea is that the ratio of ownership on a rental property changes between spouses with one spouse borrowing to buy more of the property off the other spouse. If there is equity in the property then the selling spouse only needs to pay down the portion of the debt that represents the portion of the house sold which leaves some of the proceeds to reduce non deductible debt. The buying spouse borrows a portion of the current market value so effectively some of the equity gained in the property is released. We are not saying this arrangement is not acceptable to the ATO, to the contrary in ID 2001/79 they accepted such an arrangement but this ID is not enough to protect you as discussed below. If you want to be sure that this arrangement will work for you, you should get an ATO ruling. The primary argument of your ruling request is that you did not enter into the arrangement with the dominant purpose of a tax benefit. Fundamental to your argument is a valid alternative dominant purpose. If you don’t have this then the ATO can use Part IVA to ignore the new loan and revert to the situation had the transaction not been entered into. Considering the stamp duty and refinancing cost it is worth making sure the ATO will allow the interest as a deduction first, by getting a ruling on your dominant purpose for the arrangement.

In Hart’s case 2004 the ATO won their argument that Part IVA applied by simply producing the bank advertising material promoting the tax benefits of the arrangement. So if your financier offers you a product to achieve this don’t touch it because it shows you were motivated by the tax benefit.

In ID 2001/79 a taxpayer was allowed a deduction for money borrowed to buy out his or her spouse’s share of a rental property. The trouble is this is only an ID so at best only protects anyone who relies on it in good faith from penalty interest, the ATO will still amend the tax returns and charge the tax. The second problem with this ID is it does not address the issue of whether the ATO would apply Part IVA. In short this ID should only be used as a reference in a ruling application rather than relying on it.

If you go ahead with this arrangement make sure that there truly is a transfer of ownership and that the borrowed funds go directly from this new loan into the individual bank account of the selling spouse, upon settlement. It is important that there is a clear audit trail showing the money being used to purchase an income producing asset and that this is not mixed with private funds.

Non Commercial Losses When Income Over \$250,000

When your adjusted taxable income (ATI) is over \$250,000 you cannot offset a loss from a business against your other income unless the ATO exercises its discretion. Discretion will generally only apply when it is normal for a business in your industry to have long lead times or you have experienced exceptional circumstances.

People with an ATI between \$249,999 and \$40,000 can only offset losses from a business against their other income if they pass one of the following tests:

- 1) Turnover from the business activity is at least \$20,000.
- 2) The business has produced a taxable profit in at least 3 of the last 5 years including the current year. Note this is a profit before deducting any carried forward losses from previous years.
- 3) The value of real property used in carrying on the business is at least \$500,000.
- 4) The value of other assets used in carrying on a business is at least \$100,000.

People who's ATI is under \$40,000 who are primary producers or artists can offset their losses without having to pass one of the above tests though in that low tax bracket they would probably prefer to defer them. If your business is not in one of these industries but your ATI is under \$40,000 you cannot offset the losses unless you pass the tests listed above.

There is much more detail about this subject in our Division 35, Non Commercial Losses booklet.

Probably the easiest way of getting around these restrictions is to salary sacrifice the business expenses until it no longer makes a loss. This is done by your employer reimbursing you for the expenses. As these expenses are otherwise deductible your employer will not have to pay FBT or report it on your PAYG Summary. This approach has been accepted by the ATO, reference minutes of FBT sub-committee meeting 19-8-04. But rumour has it that they are considering changing their policy. It is probable that the law will have to be changed to affect this change of policy and usually when an accepted practice is outlawed the changes are not retrospective. Nevertheless, if you are an employer offering this benefit it maybe the time to apply for a private ruling. If you are an employee you do not have to worry as it is your employer who will suffer the consequences.

If you have an ATI of more than \$250,000, want to offset non commercial losses and can pass one of the tests listed above, such as a turnover in excess of \$20,000 then consider deferring income every second year instead. Once your taxable income exceeds \$180,000 you are going to be subject to the maximum tax rate on every extra dollar. If say you earn \$300,000pa consider deferring \$51,000 of your income every second year so that your income in one year is \$249,999 and the other year \$351,000. No matter which year it is going to be taxed in the maximum tax bracket and in future years that bracket will be lower anyway. In the year that you do not qualify to offset your non commercial losses, they are simply carried forward until you do, so every second year you get to claim both years with no tax bracket disadvantage unless those losses exceed \$70,000. The only down side is the time value of waiting an extra year for your refund.

Pre 12th Dec 2006 Divorce

When you sell a property that you received as part of a divorce settlement that was finalised before 12th December 2006, make sure the person preparing your tax return is aware of this date and realises the difference.

The law as it stands today requires you to pay any CGT on that property if your ex would have been subject to CGT before the property was transferred to you. This is the case even if you have used the property solely as your home from the day you received it. But for settlements made before 12th December, 2006 the CGT calculation only takes into account the way in which you have used the property.

The trouble is this fact does not appear clearly in the legislation. You have to refer to the history notes ie

S 118-178 inserted by No 168 of 2006, s 3 and Sch 1 item 2, applicable to CGT events that:

- (a) are trigger events for the purposes of Subdivision [126-A](#) of the *Income Tax Assessment Act 1997*; and
- (b) happen after 12 December 2006.

And then trace back to how the legislation was written before that date.

Restraint Of Trade

Restraints of trade are extremely difficult to enforce especially when you have not paid a large sum for it as part of purchasing a business. So don't just rely on one to protect yourself from an outgoing partner or employee. It may prove difficult to enforce. The more restrict the restraint is the less likely the courts are to enforce it.

Seminar

Paul Wilson from We Find Houses, Julia Hartman and Vince Ilarda from BAN TACS have put together a free seminar of issues relating to investing in property from spotting the spruiker to calculating whether you can afford the property and lots in between.

Wednesday night the 23rd February at 6.30 pm till around 9pm learn to calculate how much a property will cost you to hold, the type of property that suites your profile and how to find it and review wealth creation strategies.

Saturday the 26th starting at 9am through to 2pm We go through the spruiker checklist, teach you all the traps and tricks in financing a property and what makes interest tax deductible. We review the current market and discuss investment strategies. We will set you straight on asset protection and structures. SMSFs will be covered in detail as well as structuring your portfolio for retirement. There will be plenty of time for questions afterwards and a free show bag to thank you for giving up your Saturday.

This is a fantastic opportunity to get the answers dam straight without ridiculous seminar costs. Give us the chance to spruiker proof you. The venue is Maylands Peninsula Public Golf Course, Swanbank Road, Maylands WA. We recommend you print directions off www.whereis.com.au as it doesn't show up correctly on some sat navs. The Golf club has an excellent cafe so don't worry if you have to come straight from work. Please phone 08 9443 5199 if you need more information and to let us know you are coming.

Where is Julia?

Still at our Perth office, she will be heading back east at the end of February.

Ask BAN TACS

For \$59.95 you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. For your Accountant, we will include ATO references to support our conclusion. Just go to www.bantacs.com.au and look for the Ask Bantacs link under 'Most Popular' on the home page.

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Small Business
Teachers
Year End Tax Strategies

Disclaimer: Please note in many cases the legislation referred to above has only just passed through parliament. The full effect is not clear yet but it is already necessary to make you aware of the ramifications despite the limited commentary available. On the other side of the coin by the time you read this information it may be out of date. The information is presented in summary form and intended only to draw your attention to issues you should further discuss with your accountant. Please do not act on this information without further consultation. We disclaim any responsibility for actions taken on the above without further advice as to your particular circumstances.